State of California
California Regional Water Quality Control Board
Santa Ana Region

In the matter of:	)	
	)	
Robertson's Ready Mix	)	**Complaint No. R8-2005-0073**
200 South Main Street, Suite 200	)	**for**
Corona, CA 92882	)	**Administrative Civil Liability**
	)	
Attn: Mr. Craig Phillips	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Robertson's Ready Mix (Robertson's) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose administrative civil liability pursuant to California Water Code Section 13385(c)(2). A hearing concerning this Complaint will be scheduled for the Board's regular meeting on June 24, 2005, at the City Council Chambers located in the City of Loma Linda, California.

2. Robertson's or its representative will have an opportunity to appear and be heard and to contest the allegations in this complaint and the imposition of civil liability by the Board. An agenda announcement for the meeting and the staff report pertaining to this item will be mailed to you not less than 10 days prior to the hearing date.

3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

4. The storm water runoff from Robertson's aggregate mine and ready-mix concrete operations, located on 316 acres at 24000 Santa Ana Canyon Road in the City of Anaheim, California (hereinafter facility), is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WDID Number is 830S011160.

5. The facility is alleged to have violated Provision B.3 ("Facility operators covered by this General Permit must reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of BAT [Best Available Technology Economically Achievable] for toxic and nonconventional pollutants and BCT [Best Conventional Pollutant Control Technology] for conventional pollutants. Development and implementation of an SWPPP [Storm Water Pollution Prevention Plan] that complies with the requirements in Section A of the General Permit and that includes

BMPs [Best Management Practices] that achieve BAT/BCT constitutes compliance with this requirement.") of the General Permit. As more fully set forth below, Robertson's failed to reduce or prevent the discharge of pollutants by properly developing and implementing an effective SWPPP and Monitoring and Reporting Program, resulting in the discharge of sediment-laden storm water and unauthorized non-storm water to Gypsum Creek and subsequently the Santa Ana River.

6. This Complaint is based on the following facts:

a. Most of the gravel mining and ready-mix operations at the site have ceased and the facility is currently undergoing massive grading operations in preparation for site restoration prior to cessation of industrial activities.

b. On February 11, 2005, Board staff conducted an inspection of the facility during a rain event. There had been a rain event February 8 of less than half an inch of rainfall and the storm of February 11-13 totaled more than two inches of rainfall. During that inspection, Board staff observed a sediment-laden storm water discharge, which originated from the quarry area located just south of the 91 Freeway, flowing from a corrugated pipe directly into Gypsum Creek. The source area of approximately 100 acres was bowl-shaped and drained to this pipe outlet. Upon further inspection of this area, Board staff noted that the hillside area up gradient of the discharge had been extensively graded and that no erosion or sediment control BMPs had been implemented and deep erosion rills were observed on the graded hillsides draining to this area. Further, two mounds of sediment (each approximately 15 cubic yards) had been dumped into Gypsum Creek at a road crossing. Heavy erosion at the base of these mounds attested to the amount of sediment already transported by the previous rain events. These discharges constituted violations of Provision B.3 of the General Permit because no erosion control BMPs were in place and the sediment control BMPs (sediment basins) present at the facility did not meet the BCT standard. Board staff told the plant manager that erosion and sediment control BMPs needed to be implemented immediately to prevent any further sediment laden-storm water discharges. Given the large, freshly graded area, Board staff recommended that any detention basins used should be engineered to meet or exceed the sizing criteria set forth in the Statewide General Construction Storm Water Permit.

c. On February 15, 2005, Board staff conducted a post-storm inspection of the site. While some erosion control BMPs had been implemented along some of the western slopes, adjacent to Gypsum Creek, the remaining slopes and runoff flow paths lacked both sediment and erosion control BMPs. As a consequence, the previous rain event had mobilized large amounts of sediment and had transported that sediment to Gypsum Creek and subsequently the Santa Ana River. During the inspection, Board Staff observed evidence of several sediment-laden, storm water discharges and unauthorized non-storm water

discharges that had occurred during the previous rain event. While inspecting the two detention basins, which collect runoff from the interior of the site as well as portions of the upper slope area (approximately 150 acres), it was noted that both basins had been improperly constructed and had not been adequately maintained. The basins had been designed with reinforced concrete pipes, placed horizontally through the basin walls, at the lowest end of each basin. Further, the capacity of both basins had been significantly reduced by sediment that had not been removed through an adequate maintenance program. As a result of sediment buildup and improper outlet pipe placement, it was evident that storm water entering these basins flowed through the basins with only a minimal residence time and discharged to Gypsum Creek, resulting in an excessive discharge of sediment to the creek.

d. At the west side of the facility, a series of ponds had been established during facility operations that were used to collect and contain clays and silts that were washed from the aggregate. During the February 15, 2005 inspection, it was noted that the sides of these ponds had been excavated, allowing storm water runoff to flow through the ponds, mobilizing the deposited clays and silts and transporting them to Gypsum Creek and subsequently the Santa Ana River. Inspection of the upper southeast portion of the mine and the southern perimeter fence line revealed that concentrated flow paths down the perimeter slopes had created two large erosion rills. This condition was caused by the recent grading activities, as well as the lack of erosion and sediment controls in this area. Visible erosion rills and scouring could be seen leading directly to Gypsum Creek.

e. During the February 15, 2005 inspection, it was noted that storm water flows from portions of the mine had flooded out the recycled process/wash ponds at the concrete batch plant, located at the entrance to the site. The storm water commingled with this concrete wash water (for which past analyses have shown a pH of up to 12) and flowed into Gypsum Creek, resulting in an unauthorized non-storm water discharge. These discharges constituted violations of Provision B.3 of the General Permit because no erosion control BMPs were in place, the sediment control BMPs (sediment basins) present at the facility did not meet the BCT standard and BMPs were not implemented to prevent the discharge of process wastewater. Robertson's staff were again told that they had to implement proper BMPs, including a combination of erosion and sediment controls to significantly reduce the amount of sediment leaving the site and to insure that process wastewaters did not commingle with storm flows.

f. On February 18, 2005, Board staff conducted a pre-storm inspection (a major rain event was predicted over the next few days) of this facility. When Board staff arrived at the site, it was noted that no additional erosion control BMPs had been implemented since the prior inspection, but one additional detention basin had been constructed to handle flows from the northern portion of the quarry and the northern slopes. This new basin, like the other four, appeared to be

undersized to handle the drainage area (approximately 140 acres) and was not properly engineered to provide sufficient residence times for de-silting. Board staff noted that some efforts had been made to maintain the other detention basins, but because of wet conditions and the volume of accumulated sediment, the maintenance work necessary to remove sediment and restore detention basin capacity had not been completed. Finally, major flow paths, including roads and the area downstream of an elevated drainage pipe, had no sediment or erosion controls. These discharges constituted violations of Provision B.3 of the General Permit because no erosion control BMPs were in place and where sediment control BMPs (sediment basins) were implemented, they did not meet the BCT standard. Robertson's staff were told that with the anticipated severity of the upcoming rain event, significant improvements would have to be made in erosion and sediment controls to protect the site.

g. On February 23, 2005, Board staff conducted an inspection near the end of a six-day, six-inch rain event. Board staff observed several sediment-laden storm water discharges and unauthorized, non-storm water discharges flowing into Gypsum Creek. Sediment-laden storm water was discharging from the detention basin serving the quarry area due to a lack of capacity (the detention basin area was undersized for the approximate 140-acre tributary area). The two lower detention basins adjacent to Gypsum Creek were still in need of maintenance and still had improperly constructed drainage systems. As a result of these deficiencies, sediment-laden storm water again flowed directly through the detention basin and discharged a heavy sediment load into Gypsum Creek and subsequently the Santa Ana River. Finally, in order to reduce water levels that had collected in several ponds at the top of the facility, storm water was being released via a pipe that had been installed through the side of the berm. The discharge from these ponds was allowed to flow down the main dirt road, through the concrete truck washout pits, and contributed to the flow that again flooded the process wastewater ponds at the batch plant and discharged storm water, commingled with high pH, heavy-metal containing wastewater, into Gypsum Creek. These discharges constituted violations of Provision B.3 of the General Permit because no erosion control BMPs were in place, where sediment control BMPs (sediment basins) were implemented, they did not meet the BCT standard and BMPs were not implemented to prevent the discharge of process wastewater.

7. Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars ($10,000) for each day the violation occurs. Additional liability, not to exceed $10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. The volume of discharges from the facility for the nine days of precipitation in February (11^{th}-13^{th} and 19^{th}-24^{th} resulting in approximately eight inches of rain) was estimated by Board staff to be 22,000,000 gallons.

8. Pursuant to Section 13385(c), Robertson's is civilly liable for a maximum amount of $220,000,000 ($90,000 for 9 days of violation @ $ 10,000 per day and $219,990,000 for 21,999,000 gallons of sediment-laden storm water and unauthorized, non-storm water at $10 per gallon) for violations cited in Paragraph 5, above.

9. Regional Board staff spent approximately 98 hours investigating all four incidents (@$70.00 per hour, the total cost for staff time is $6,860). Based on staff's calculations, the facility saved approximately $374,996 by not implementing adequate BMPs throughout the facility to control the discharge of sediment-laden storm water and unauthorized non-storm water discharges (See Attachment A showing staff's calculations).

10. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The factors are evaluated in the following table:

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	The lack of implementation of any erosion control BMPs and inadequate implementation of sediment control BMPs at the facility resulted in the discharge of tons of sediment to Gypsum Creek and the Santa Ana River.
B. Culpability	This discharger filed a Notice of Intent to come under coverage of the General Permit in 1997. The permit requires the implementation of BAT/BCT controls to eliminate/reduce the amount of pollutants discharged with storm water runoff from the site. The discharger was advised on multiple occasions that BMP implementation, as observed by Board staff, was inadequate to protect the site, and yet failed to take adequate corrective actions. The discharger is fully culpable for the violations noted above.
C. Economic Benefit or Savings	Staff has estimated that the facility has saved approximately $374,996 by not implementing appropriate BMPs and by not providing employees with proper training.

D. Prior History of Violations	This facility has been the subject of numerous formal and informal enforcement actions including: one Administrative Civil Liability Complaint (ACL) for $27,800, five (5) Notices of Violation (NOV) and frequent verbal warnings. Within this Region, Robertson's-owned facilities have received a total of two (2) ACLs totaling $52,800, fourteen (14) NOVs and numerous verbal warnings.
E. Other Matters as Justice May Require	Regional Board staff spent at least a total of 98 hours investigating these incidents (@$70.00 per hour, the total cost for staff time is $6,860).
F. Ability to pay	Robertson's has 34 facilities throughout Southern California and has a fleet of over 750 ready mix trucks. The discharger has not provided any information to indicate that it is unable to pay the proposed amount.

11. After consideration of these factors and additional information provided by the discharger, the Executive Officer proposes that civil liability be imposed on the facility in the amount of $691,846 for the violations cited above. An invoice for this amount is enclosed.

12. You may waive your right to a hearing. If you choose to do so, please sign the attached waiver and return it, together with a check or money order payable to the State Water Resources Control Board for the amount of civil liability proposed under Paragraph 11, above to Sacramento in the enclosed preprinted envelope.

If you have any questions, please contact Aaron A. Buck at (951) 782-4469, Mark Smythe at (951) 782-4998, Michael Adackapara at (951) 782-3238, or contact the Board 's legal counsel, Jorge Leon, at (916) 341-5180.

5/23/05
Date

Gerard J. Thibeault
Executive Officer

California Regional Water Quality Control Board
Santa Ana Region

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Robertson's Ready Mix	)	Complaint No. R8-2005-0073
200 South Main Street.	)	for
Corona, California 92882	)	Administrative Civil Liability
	)	
ATTN: Mr. Craig Phillips	)	

Waiver of Hearing

I agree to waive the right of Robertson's Ready Mix to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2005-0073. I have enclosed the bottom portion of the invoice and a check for $691,846 payable to the State Water Resources Control Board for the proposed liability in Paragraph 11 of Complaint No. R8-2005-0073. I understand that I am giving up the right of Robertson's Ready Mix to be heard and to argue against the allegations made in the Complaint No. R8-2005-0073, and against the imposition of, and amount of, civil liability.

_____ _____

Date Robertson's Ready Mix

ATTACHMENT

COST SAVINGS CALCULATIONS:

Approximate area of perimeter slopes requiring erosion controls = 90 acres 90 acres @$0.03/ft^2	$117, 612
Approximate area of interior slopes/areas requiring erosion controls = 130 acres 130 acres @ $0.03/ft^2	$169, 884
Three additional detention basins 3 basins @ $5,000/basin	$15,000
Construction of diversion structures, energy dissipaters, etc.	$10,000
Sandbags, Visqueen, other sediment/erosion controls + labor and maintenance (includes additional expense for proper design and construction of existing detention basins)	$10,000
Regular maintenance of 7 sediment basins 7 basins @ $1,500/basin, 5 times per season	$52,500
Total	$374, 996